

OCEAN SHORES/ITT RAYONIER MITIGATION, GRAYS HARBOR COUNTY

The City of Ocean Shores is constructing an airport on a 235-acre site located on the east side of the Ocean Shores Peninsula, on the shore of North Bay, a northerly extension of Grays Harbor. Construction of the airport includes a 40+ acre wetland fill. ITT Rayonier, Inc. created an unauthorized 17 acre fill in wetlands adjacent Bowerman Basin in Grays Harbor. These developments will result in certain unavoidable adverse impacts on fish, wildlife, their habitat and related recreation.

Provision of mitigation for adverse impacts from construction of these projects will include the following:

1. Conveyance in fee-simple title to the Department of Game of 185+ acres of tidal wetlands adjacent to the airport site and North Bay. The saltwater wetlands are to be preserved in their natural state.
2. Conveyance in fee-simple title to the Department of Game of 57 acres of diked pastureland adjacent wetlands in South Bay, Grays Harbor. The pastureland will be converted to saltmarsh and preserved in that state.
3. Construction of a new earthen dike along the north and west boundaries of the diked pastureland to protect adjacent property from saltwater intrusion. The old dike will be breached to allow saltwater flooding of the pastureland.
4. A cash settlement of \$2,500 to be used for maintenance of the new dikes.

The department recommends the Commission approve acceptance of the above 185+ acre parcel adjacent the airport site, the 57 acre diked pastureland, the new dike construction and the funds to maintain them.



STATE OF WASHINGTON

DEPARTMENT OF GAME

905 East Heron, Aberdeen, WA 98520 (206) 533-9335

October 16, 1986

Bob Olander  
City Manager  
City of Ocean Shores, Ocean Shores WA. 98569

Dear Bob:

We have reviewed your proposal (August 22, 1986 letter) to relocate the dike at the west end of the Elk River mitigation site. The new location of the dike is acceptable to the Department of Game.

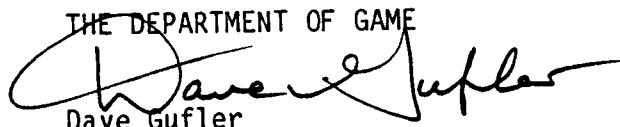
Our site visit on October 8, 1986, was informative and confirmed the fact that the area west (inland) of the proposed dike location is heavily wooded and probably would not provide the intended salt marsh type habitat as originally planned. During our site visit we discussed a meandering dike line and configuration and location of the borrow ditch. To ensure a common understanding of these points we suggest another site visit as soon as the new dike line is identified. Please contact Dan Guy or myself to arrange the next on site meeting.

This change should not require a modification of the original mitigation agreement. We suggest the City obtain similar letters of approval from all agencies party to the original agreement.

Hopefully we can proceed before the end of October.

Sincerely,

THE DEPARTMENT OF GAME



Dave Gufler  
Regional Habitat Biologist

DG:wm

cc: Mike Kuttel  
Dan Guy  
Dave Stout  
Ed Murrell  
Carl Kassenbaum  
Dave Mudd



TELEPHONE (206) 289-2486

## CITY OF OCEAN SHORES

POST OFFICE BOX 909 O OCEAN SHORES, WASHINGTON 98569

December 30, 1982

Jim Johnston, Assistant Director  
Department of Game  
600 N Capitol Way  
Olympia, Wa 98504

Dear Jim:

Enclosed is a signed original of the mitigation agreement.  
Thank you for your help in finalizing our negotiations and  
agreement in such a short time.

Very truly yours,

Robert L. Olander  
City Manager

RLO:vh

encs

## AGREEMENT

This agreement is made between the City of Ocean Shores (City), project sponsor, and the State of Washington Department of Game (Game). This is a real covenant entered into so as to bind the parties, assignees, or purchasers.

1. The project sponsor has proposed to develop an airport near Ocean Shores in Grays Harbor County, Washington, Exhibit I, project map, incorporated herein. The project consists of an airport complex to be constructed in the area known as Division 25, approximately 235 acres of land. This site is situated in Section 35, Township 18 N., Range 12 W.W.M., and in Section 2, Township 17 N., Range 12 W.W.M. The site is located on the east side of the Ocean Shores Peninsula, on the shore of North Bay, which is a northerly extension of Grays Harbor. The project area map, Exhibit I, refers to mitigation land Area C. This area is no longer a part of the project and any reference therein to Area C should be disregarded.

The project purposes include construction of an airport and protection of fish, wildlife, and their habitat, and provision of mitigation for unavoidable adverse impacts from construction of the project.

2. The airport development includes a 40+ acre wetland fill within the bounds of the 45-acre property, "Area A," described on the attached legal description, Exhibit II, incorporated herein.
3. The remaining 185-190 acres of Division 25, consists of those areas shown in Exhibit I as "Area B," and legally described on the attached Exhibit III, incorporated herein.

The above described 185-190 acres of property, Area B, will be conveyed by warranty deed to Game in fee simple title and maintained in its natural state except that the City will retain the right to remove trees which interject the airspace surfaces depicted on the attached Exhibit I as the "future clear zone." The city will obtain Game approval prior to any tree removal within the "future clear zone."

Within the "future clear zone," the City also retains the right to prohibit the congregation of large groups of people if air traffic safety might be jeopardized; prohibit the discharge of firearms; and prohibit electromagnetic or visual interference with aircraft. The City will obtain

Game approval prior to implementation of these prohibitions.

4. The Washington State Department of Game has the responsibility to preserve, protect, and perpetuate the fish and wildlife resources in the State of Washington. Through this agreement, the Department also implements its responsibility under the Fish and Wildlife Coordination Act, 16 USC Section 661, et seq., to consult with and report to the Corps of Engineers and Federal Aviation Administration regarding appropriate measures for mitigating the adverse impacts of this project on the fish and wildlife it is its duty to protect.

5. The impacts of this project upon the fish and wildlife resources, their habitat, fishing, and other wildlife recreational activity have been identified. Appropriate mitigation measures have been identified by the Department. This document memorializes the agreement of the parties hereto with respect to all mitigation measures which have been agreed upon. These measures are set forth below. This agreement also constitutes a real covenant running with the project lands, and it will be filed of record in Grays Harbor County to bind the parties, their successors, assignees, or

purchasers.

6. The specific areas in which mitigation measures will occur are identified in the legal description in Paragraphs 2, 3 herein and on the project map, Exhibit I, Areas A and B.
7. The City agrees to convey Area B by warranty deed in fee simple title to Game, together with all rights and appurtenances thereunto belonging.
8. The City agrees to build the airport at the specific location, Area A, described in Exhibit I, to reduce adverse wetland impacts.
9. The City agrees to mitigate for losses associated with the proposed 40+ acre wetland fill (Area A) by a cash settlement provided to Game for purchase of mitigation lands equivalent to those lost. The total amount required for land and land acquisition cost is \$101,340. This money will be provided in two phases.
10. The settlement will be accomplished as follows:
  - a. The City agrees to transmit \$65,000 to Game

within ninety days of receiving Phase I funding from the Federal Aviation Authority (FAA) and in no event beyond June 1, 1983. This money will be used to purchase mitigation land (including acquisition costs). If the entire \$65,000 is not spent, the remainder will be returned to the City.

- b. The City agrees to apply for an additional \$36,340 from the FAA. These funds will be sought for land purchase and for land acquisition costs, see Exhibit IV, incorporated herein. The City will include this request for \$36,340 in its request for Phase II FAA funding. The request will be submitting to FAA by July 31, 1983.
  1. If FAA approves all or part of these additional funds, the money approved will be submitted to Game within ninety days of when the City receives the money.
  11. If total mitigation is not accomplished (lands purchased and acquisition costs, overhead, land agent costs and the like are paid) within five years after the date that Game receives this additional

Phase II funding, the unexpended portion of the Phase II funding will be returned to the City.

- c. Phase I and II funding will be placed in a special wildlife account pursuant to RCW 77.12.320 - 323 to be used specifically for land purchase and other costs associated with acquisition of wetlands or equivalent lands for the Ocean Shores mitigation program.
- d. The City will assist Game in acquiring mitigation lands under this agreement.
- e. The City will assume responsibility for appraisal and title search for any lands considered for purchase for this mitigation effort.
- f. The City will assist Game in determining and resolving any liability problems associated with the proposed land purchases.

This agreement shall be effective as of the date of  
execution by all parties.

Frank R. Lockard  
Director, Washington  
State Department of Game

Dated: 12/29/82

Robert T. Gaudin  
City Manager, City of  
Ocean Shores

Dated: 12-29-82

APPROVED AS TO FORM  
this        day of  
December, 1982

Paul Miller  
Asst. Attorney General



Reid, Middleton & Associates, Inc.

Sheets 1 of 2

Engineers • Surveyors • Planners

December 23, 1982  
File No. 6623D/P-4

CITY OF OCEAN SHORES, PROPOSED MUNICIPAL AIRPORT

LEGAL DESCRIPTIONS

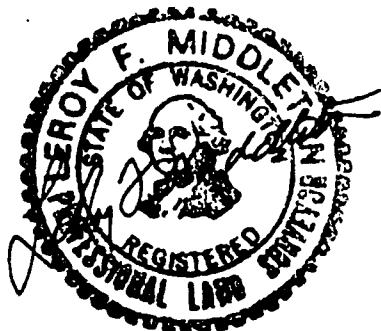
PARCEL "A" (AIRPORT SITE)

The following described property was formerly known as a portion of Division No. 25 Ocean Shores:

That portion of Government Lots 1, 2, 3 & 4 of Sec. 35, Twp. 18 N, R 12 W, W.M. and that portion of the NE 1/4 of the SW 1/4 of said Sec. 35 and that portion of Government Lots 1, 2, 3 & 4 of Sec. 2, Twp. 17 N, R 12 W, W.M., and that portion of Government Lot 4 of Sec. 11, Twp. 17 N, R 12 W, W.M., Grays Harbor County, Washington, described as follows:

Commencing at the NW corner of Government Lot 1, Sec. 35 Twp. 18 N, R 12 W, W.M.; thence S 86°43'45" E along the north line of said Government Lot 1, a distance of 1,477.59 ft; thence S 7°41'17" E 467.55 ft; thence S 5°32'00" W 788.50 ft; thence S 22°00'00" E 716.94 ft; thence S 2°59'31" W 501.67 ft; thence S 12°38'00" E 783.80 feet to the point of beginning, thence continuing S 12°38'00" E 211.10 ft; thence S 9°35'21" E 407.82 ft; thence S 3°58'00" E 971.31 ft; thence S 16°29'44" E 368.78 ft; thence S 13°58'14" E 319.97 ft; thence S 9°40'00" E 1631.73 ft; thence N 82°30'00" E 410.00 ft; thence N 7°30'00" W 3900.00 ft; thence S 82°30'00" W 539.30 feet to the point of beginning.

TOGETHER with Lots 74 through 85, inclusive, Ocean Shores Division No. 5A and Lots 1 through 8, Block 9, Ocean Shores Division No. 23, according to the plats thereof recorded in Grays Harbor County, Washington.





Reid, Middleton & Associates, Inc.

Sheets 2 of 2

Engineers • Surveyors • Planners

December 23, 1982

File No. 6623D/P-4

PARCEL "B" (TO WASHINGTON STATE DEPARTMENT OF GAME)

The following described property was formerly known as a portion of Division No. 25 Ocean Shores.

That portion of Government Lots 1, 2, 3 & 4 of Sec. 35, Twp. 18 N, R 12 W, W.M. and that portion of the NE 1/4 of the SW 1/4 of said Sec. 35 and that portion of Government Lots 1, 2, 3 & 4 of Sec. 2, Twp. 17 N, R 12 W, W.M., and that portion of Government Lot 4 of Sec. 11, Twp. 17 N, R 12 W, W.M., Grays Harbor County, Washington, described as follows:

Commencing at the NW corner of Government Lot 1, Sec. 35, Twp. 18N, R 12 W, W.M.; thence S 86°43'45" E along the north line of said Government Lot 1, a distance of 1,477.59 ft. to the point of beginning; thence S 7°41'17" E 467.55 ft; thence S 5°32'00" W 788.50 ft; thence S 22°00'00" E 716.94 ft; thence S 2°59'31" W 501.67 ft; thence S 12°38'00" E 783.80 ft; thence N 82°30'00" E 539.30 ft; thence S 7°30'00" E 3900.00 ft; thence S 82°30'00" W 410.00 ft; thence S 9°40'00" E 150.00 ft; to the beginning of a curve to the right with a radius of 1,120 ft; thence southerly along said curve through a central angle of 22°20'00", an arc distance of 436.56 ft. to a point of tangency; thence S 12°40'00" W 765.43 ft. to the beginning of a curve to the left with a radius of 1,080.00 ft; thence southerly along said curve through a central angle of 15°40'00", an arc distance of 295.31 ft. to a point of tangency; thence S 3°00'00" E 973.98 ft. to the beginning of a curve to the left with a radius of 130.00 ft; thence southeasterly along said curve through a central angle of 40°27'08", an arc distance of 91.78 ft. to a point of tangency; thence S 43°27'08" E 240.00 ft; thence S 46°32'52" W 200.00 ft; thence S 43°27'08" E 289.69 ft. to the beginning of a curve to the right with a radius of 470.00 ft; thence southeasterly along said curve through a central angle of 43°27'08", an arc distance of 356.44 ft. to a point of tangency; thence due south 809.91 ft; thence S 18°29'05" E 240.31 ft. to a point intersecting the meander line of Government Lot 4, Sec. 11, Twp. 17 N, R 12 W, W.M.; thence along said meander line N 2°27'58" E 960.42 ft; thence N 2°45'58" E 1,328.73 ft. to a point intersecting the line of ordinary high water; thence along the line of ordinary high water N 11°25'49" E 212.42 ft; thence N 2°45'58" E 557.05 ft. to a point intersecting the meander line; thence along said meander line N 15°54'31" E 838.52 ft.; thence N 23°59'45" E 1,305.96 ft.; thence N 10°05'44" E 1,109.80 ft.; thence N 3°22'12" E 659.79 ft.; thence N 6°37'59" W 593.80 ft.; thence N 44°38'46" W 1,121.63 ft.; thence N 29°38'28" W 1,253.56 ft.; thence N 37°38'38" W 1,055.64 ft.; thence N 21°38'18" W 527.81 ft.; thence N 8°38'01" W 989.66 ft. to the north line of Government Lot 1, Sec. 35, Twp. 18N, R 12W, W.M.; thence N 86°43'45" W 73.41 ft. along the north line of said Government Lot 1 to the point of beginning, and containir approximately 185 acres.

EXHIBIT IV

1. Phase I

\$65,000 from Ocean Shores Phase I appropriation (Land)

2. Phase II

\$21,340 for Expenses incurred for acquisition

15,000 for Land

\$36,340 Total

3. Grand Total

\$80,000 Land Cost

21,340 Land Acquisition Costs\*

\$101,340 Total

\*Land acquisition costs include:

salaries, benefits, overhead \$15,380

travel, miscellaneous material 960

land survey 5,000

\$21,340

## AGREEMENT

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This agreement is made between the City of Ocean Shores (City), project sponsor, and a resource agency committee (representatives of the U.S. Environmental Protection Agency; U.S. Department of the Interior, Fish and Wildlife Service; U.S. Department of Commerce; National Marine Fisheries Service; and the Washington Department of Game (WDG), representing the State of Washington). This is a real covenant entered into so as to bind the parties, assignees, or purchasers.

1. The project sponsor has proposed to develop an airport near Ocean Shores in Grays Harbor County, Washington, Exhibit I, project map, incorporated herein. The project consists of an airport complex to be constructed in the area known as Division 25, approximately 235 acres of land. This site is situated in Section 35, Township 18 N., Range 12 W.W.M., and in Section 2, Township 17 N., Range 12 W.W.M. The site is located on the east side of the Ocean Shores Peninsula, on the shore of North Bay, which is a northerly extension of Grays Harbor.

The project purposes include construction of an airport and protection of fish, wildlife, and their habitat, and provision of mitigation for unavoidable adverse impacts from construction of the project.

2. The airport development includes a 40+ acre wetland fill within the bounds of the 45-acre property, "Area A," described on the attached legal description, Exhibit II, incorporated herein.
3. The remaining 185-190 acres of Division 25, consists of those areas shown in Exhibit I as "Area B," and legally described on the attached Exhibit III, incorporated herein.

The above described 185-190 acres of property, Area B, will be conveyed by warranty deed to WDG in fee simple title and maintained in its natural state except that the City will retain the right to remove trees which interject the airspace surfaces depicted on the attached Exhibit I as the "future clear zone." The City will obtain WDG approval prior to any tree removal within the "future clear zone."

Within the "future clear zone," the City also retains the right to prohibit the congregation of large groups of people if air traffic safety might be jeopardized; prohibit the discharge of firearms; and prohibit electromagnetic or visual interference with aircraft. The City will obtain WDG approval prior to implementation of these prohibitions.

4. The 57 acres of diked pasture land, "Area C," and legally described on the attached Exhibit IV, incorporated herein, will be converted to saltmarsh as replacement of wetlands lost to airport development.

The above described 57 acres of property, Area C, will be conveyed by warranty deed to WDG in fee simple title and maintained as a saltmarsh.

5. The Washington State Department of Game has the responsibility to preserve, protect, and perpetuate the fish and wildlife resources in the State of Washington. Through this agreement, the Department also implements its responsibility under the Fish and Wildlife Coordination Act, 16 USC Section 661, et seq., to consult with and report to the Corps of Engineers and Federal Aviation Administration regarding appropriate measures for mitigating the adverse impacts of this project on the fish and wildlife it is its duty to protect.
6. The impacts of this project upon the fish and wildlife resources, their habitat, fishing, and other wildlife recreational activity have been identified. Appropriate mitigation measures have been identified by the Department. This document memorializes the agreement of the parties hereto with respect to all

mitigation measures which have been agreed upon. These measures are set forth below. This agreement also constitutes a real covenant running with the project lands, and it will be filed of record in Grays Harbor County to bind the parties, their successors, assignees, or purchasers.

7. The specific areas in which mitigation measures will occur are identified in the legal description in Paragraphs 2, 3, 4 herein and on the project map, Exhibit I, Areas A, B and C.
8. The City agrees to convey Area B by warranty deed in fee simple title to WDG, together with all rights and appurtenances thereunto belonging.
9. The City agrees to build the airport at the specific location, Area A, described in Exhibit I, to reduce adverse wetland impacts.
10. The City agrees to mitigate for losses associated with the proposed 40+ acre wetland fill (Area A) by conveyance of Area C by warranty deed to WDG in fee simple title. Area C includes 17.0 acres to be purchased with funds in the amount of \$25,500 provided by ITT Rayonier, Inc.

- a. The City agrees to coordinate the transfer of funds (\$25,500) from ITT Rayonier, Inc. and deposit said funds into an escrow account for the purchase of lands in Area C.
  - b. The City will assume responsibility for appraisal, title search and surveying costs for lands in Area C.
11. The City agrees to provide WDG with complete plans and specifications for dike construction in Area C. Final plans and specifications are subject to WDG approval.
12. The City agrees to pay for the cost of dike construction along the entire northern and western boundaries of Area C per approval plans and specifications. The City will obtain bids and supervise the construction of dikes in Area C.
13. The City agrees to transfer the total sum of \$2,500 to WDG within ninety days of approval of this Agreement.

The \$2,500 shall be placed in a special wildlife account pursuant to RCW 77.12.320-323 to be used specifically for costs associated with maintenance of the dikes in Area C.

14. The City agrees to secure legal access (ingress and egress) to Area C.
15. Members of the resource agency committee agree to assist WDG breach the existing dike in Area C approximately one year after construction of the new dikes. Breaching of the existing dike will allow the pastureland to eventually convert to saltmarsh habitat.
16. All rights and responsibilities of all parties to this agreement shall be conditioned upon the issuance by the Corps of Engineers of a permit to the City of Ocean Shores to construct its new airport.
17. The following signatories consider these actions to adequately satisfy the mitigation requirements for the Corps of Engineers permit number 071-0YB-006909 titled City of Ocean Shores.

This agreement shall be effective as of the date of  
execution by all parties.



Frank R. Lockard  
Director  
Washington State Department of Game  
Dated: 8-22-83

H. A. Larkins  
Regional Director  
National Marine Fisheries Service  
Dated: \_\_\_\_\_

Ernesta B. Barnes  
Regional Administrator  
Environmental Protection Agency  
Dated: \_\_\_\_\_

Joseph R. Blum  
Assistant Regional Director  
U.S. Fish and Wildlife Service  
Dated: \_\_\_\_\_

Robert L. Olander  
City Manager  
City of Ocean Shores  
Dated: \_\_\_\_\_

APPROVED AS TO FORM  
this \_\_\_\_\_ day of

\_\_\_\_\_  
Asst. Attorney General

Grays Harbor Title Company  
Post Office Box 386  
Aberdeen, Washington 98520

Dear Sirs:

Upon 1) the deposit of funds in the amount of \$25,500 by ITT Rayonier in escrow account #5608, as provided by the earnest money agreement between the City of Ocean Shores and sellers, for application towards aquisition of property, and 2) transfer of property deed(s) to the Washington Department of Game, the following signatories consider the above actions to adequately satisfy the mitigation requirements specified in Corps of Engineers permit number 071-0YB-4-008377 titled ITT Rayonier, Inc.



Frank R. Lockard  
Director  
Washington State Department of Game

Dated 8-22-83

H.A. Larkins  
Regional Director  
National Marine Fisheries Service

Dated \_\_\_\_\_

Ernesta B. Barnes  
Regional Administrator  
Environmental Protection Agency

Dated \_\_\_\_\_

Joseph R. Blum  
Assistant Regional Director  
U.S. Fish and Wildlife Service

Dated \_\_\_\_\_

Robert L. Olander  
City Manager  
City of Ocean Shores

Dated \_\_\_\_\_

STATUTORY WARRANTY DEED

The grantor, the City of Ocean Shores, a municipal corporation and political subdivision of the State of Washington, for and in consideration of Ten Dollars (\$10) and Other Valuable Consideration, conveys and warrants to the Washington State Department of Game, the following-described real estate, situate in the county of Grays Harbor, state of Washington.

(legal description attached hereto)

SUBJECT TO easements, restrictions, provisions, and reservations of record.

Dated August 31, 1983.

CITY OF OCEAN SHORES

by Glenn Fundenberger  
Glenn Fundenberger, Mayor

STATE OF WASHINGTON )  
                                  ) ss.  
GRAYS HARBOR COUNTY )

On this 31st day of August, 1983, before me, the undersigned, a notary public in the state of Washington, duly commissioned and sworn, personally appeared Glenn Fundenberger, to me known to be the mayor of the City of Ocean Shores, a municipal corporation and political subdivision of the State of Washington, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of the City of Ocean Shores for the uses and purposes therein mentioned and on oath stated that he, as mayor, was authorized by the City Council of the City of Ocean Shores to execute said instrument.

WITNESS my hand and official seal the day and year first above written in this certificate.

Douglas A. Jensen  
NOTARY PUBLIC FOR WASHINGTON  
Residing at Montesano

## Legal Description

That portion of Government Lots 1, 2, 3 and 4 of Section 35, Township 18 North, Range 12 West of the Willamette Meridian and that portion of the Northeast Quarter of the Southwest Quarter of said Section 35 and that portion of Government Lots 1, 2, 3 and 4 of Section 2, Township 17 North, Range 12 West of the Willamette Meridian, and that portion of Government Lot 4 of Section 11, Township 17 North, Range 12 West of the Willamette Meridian, Grays Harbor County, Washington, described as follows:

Commencing at the Northwest corner of Government Lot 1, Section 35, Township 18 North, Range 12 West of the Willamette Meridian;

Thence South  $86^{\circ} 43' 45''$  East along the North line of said Government Lot 1, a distance of 1,477.59 feet to the true point of beginning;

Thence South  $7^{\circ} 41' 17''$  East 467.55 feet;

Thence South  $5^{\circ} 32' 00''$  West 788.50 feet;

Thence South  $22^{\circ} 00' 00''$  East 716.94 feet;

Thence South  $2^{\circ} 59' 31''$  West 501.67 feet;

Thence South  $12^{\circ} 38' 00''$  East 783.80 feet;

Thence North  $82^{\circ} 30' 00''$  East 539.30 feet;

Thence South  $7^{\circ} 30' 00''$  East 3900.00 feet;

Thence South  $82^{\circ} 30' 00''$  West 410.00 feet;

Thence South  $9^{\circ} 40' 00''$  East 150.00 feet;

to the beginning of a curve to the right with a radius of 1,120 feet;

Thence southerly along said curve through a central angle of  $22^{\circ} 20' 00''$ , an arc distance of 436.56 feet to a point of tangency;

Thence South  $12^{\circ} 40' 00''$  West 765.43 feet to the beginning of a curve to the left with a radius of 1,080.00 feet;

Thence southerly along said curve through a central angle of  $15^{\circ} 40' 00''$ , an arc distance of 295.31 feet to a point of tangency;

Thence South  $3^{\circ} 00' 00''$  East 973.98 feet to the beginning of a curve to the left with a radius of 130.00 feet;

Thence Southeasterly along said curve through a central angle of  $40^{\circ} 27' 08''$ , an arc distance of 91.78 feet to a point of tangency;

Thence South  $43^{\circ} 27' 08''$  East 240.00 feet;

Thence South  $46^{\circ} 32' 52''$  West 200.00 feet;

Thence South  $43^{\circ} 27' 08''$  East 289.69 feet to the beginning of a curve to the right with a radius of 470.00 feet;

Thence Southeasterly along said curve through a central angle of  $43^{\circ} 27' 08''$ , an arc distance of 356.44 feet to a point of tangency;

Thence due South 809.91 feet;

Thence South  $18^{\circ} 29' 05''$  East 240.31 feet to a point intersecting the meander line of Government Lot 4, Section 11, Township 17 North, Range 12 West of the Willamette Meridian;

Thence along said meander line North  $2^{\circ} 27' 58''$  East 960.42 feet;

Thence North  $2^{\circ} 45' 58''$  East 1,328.73 feet to a point intersecting the line of ordinary high water;

Thence along the line of ordinary high water North  $11^{\circ} 25' 49''$  East 212.42 feet;

Thence North  $2^{\circ} 45' 58''$  East 557.05 feet to a point intersecting the meander line;

Thence along said meander line North  $15^{\circ} 54' 31''$  East 838.52 feet;

Thence North  $23^{\circ} 59' 45''$  East 1,305.96 feet;

Thence North  $10^{\circ} 05' 44''$  East 1,109.80 feet;

Thence North  $3^{\circ} 22' 12''$  East 659.79 feet;

Thence North  $6^{\circ} 37' 59''$  West 593.80 feet;

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Thence North  $44^{\circ} 38' 46''$  West 1,121.63 feet;

Thence North  $29^{\circ} 38' 28''$  West 1,253.56 feet;

Thence North  $37^{\circ} 38' 38''$  West 1,055.64 feet;

Thence North  $21^{\circ} 38' 18''$  West 527.81 feet;

Thence North  $8^{\circ} 38' 01''$  West 989.66 feet to the North line of Government Lot 1, Section 35, Township 18 North, Range 12 West of the Willamette Meridian;

Thence North  $86^{\circ} 43' 45''$  West 73.41 feet along the North line of said Government Lot 1 to the true point of beginning;

Situate in the County of Grays Harbor, State of Washington.

STATUTORY WARRANTY DEED

The grantor, the City of Ocean Shores, a municipal corporation and political subdivision of the State of Washington, for and in consideration of Ten Dollars (\$10) and Other Valuable Consideration, conveys and warrants to the Washington State Department of Game, the following-described real estate, situate in the county of Grays Harbor, state of Washington.

(legal description attached hereto)

SUBJECT TO PUD easement dated May 20, 1941, recorded August 5, 1941, under File No. 412025, Volume 235 of Deeds, page 200, records of Grays Harbor County Auditor; and

SUBJECT TO reservation of one-half of all oil, gas, and minerals pursuant to document dated November 19, 1952, recorded November 20, 1952, under File No. 556293, Volume 332 of Deeds, page 313, records of Grays Harbor County Auditor.

Dated August 31, 1983.

CITY OF OCEAN SHORES

by Glenn Fundenberger  
Glenn Fundenberger, Mayor

STATE OF WASHINGTON ) ss.  
GRAYS HARBOR COUNTY )

On this 31st day of August, 1983, before me, the undersigned, a notary public in the state of Washington, duly commissioned and sworn, personally appeared Glenn Fundenberger, to me known to be the mayor of the City of Ocean Shores, a municipal corporation and political subdivision of the State of Washington, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of the City of Ocean Shores for the uses and purposes therein mentioned and on oath stated that he, as mayor, was authorized by the City Council of the City of Ocean Shores to execute said instrument.

WITNESS my hand and official seal the day and year first above written in this certificate.

Taylor C. Lewis  
NOTARY PUBLIC FOR WASHINGTON  
Residing at Montesano

STATUTORY WARRANTY DEED

The grantor, the City of Ocean Shores, a municipal corporation and political subdivision of the State of Washington, for and in consideration of Ten Dollars (\$10) and Other Valuable Consideration, conveys and warrants to the Washington State Department of Game, the following-described real estate, situate in the county of Grays Harbor, state of Washington.

(legal description attached hereto)

SUBJECT TO PUD easement dated May 20, 1941, recorded August 5, 1941 under File No. 412025, Volume 235 of Deeds, page 200, records of Grays Harbor County Auditor; and  
SUBJECT TO reservation of one-half of all oil, gas, and minerals pursuant to document dated November 19, 1952, recorded November 20, 1952, under File No. 556293, Volume 332 of Deeds, page 313, records of Grays Harbor County Auditor.

Dated August 31, 1983.

CITY OF OCEAN SHORES

by Glenn Fundenberger  
Glenn Fundenberger, Mayor

STATE OF WASHINGTON )  
                                  ) ss.  
GRAYS HARBOR COUNTY )

On this 31st day of August, 1983, before me, the undersigned, a notary public in the state of Washington, duly commissioned and sworn, personally appeared Glenn Fundenberger, to me known to be the mayor of the City of Ocean Shores, a municipal corporation and political subdivision of the State of Washington, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of the City of Ocean Shores for the uses and purposes therein mentioned and on oath stated that he, as mayor, was authorized by the City Council of the City of Ocean Shores to execute said instrument.

WITNESS my hand and official seal the day and year first above written in this certificate.

Douglas A. Jensen  
NOTARY PUBLIC FOR WASHINGTON  
Residing at Montesano

LEGAL DESCRIPTION:

A portion of Section 19, Township 16 North, Range 11 West of the Willamette Meridian, Grays Harbor County, Washington, described as follows:

Commencing at the West one-quarter corner of said Section 19;  
Thence South  $88^{\circ}47'55''$  East along the East-West centerline of Section 19, a distance of 2535.66 feet to the True Point of Beginning;

Thence North  $1^{\circ}14'56''$  West parallel with the West line of Government Lot 2 a distance of 1367.82 feet to the North line of the Southeast Quarter of the Northwest Quarter of said Section 19;  
Thence South  $89^{\circ}23'57''$  East along said North line and its extension a distance of 768.17 feet to the Northeasterly toe of an existing dike;

Thence South  $27^{\circ}56'42''$  East along said toe a distance of 336.53 feet;  
Thence continue along said toe South  $48^{\circ}43'03''$  East a distance of 374.69 feet;

Thence continue South  $46^{\circ}28'40''$  East a distance of 346.70 feet;  
Thence continue South  $46^{\circ}18'38''$  East a distance of 194.83 feet to the East line of Government Lot 2 of Section 19;

Thence South  $0^{\circ}59'04''$  East along said East line a distance of 431.75 feet to the Northerly right-of-way line of State Highway S.R. 105;

Thence North  $89^{\circ}35'38''$  West along said Northerly right-of-way line a distance of 892.36 feet;

Thence continue North  $89^{\circ}48'49''$  West a distance of 465.84 feet to the West line of Government Lot 2;

Thence South  $1^{\circ}14'56''$  East along said West line a distance of 45.01 feet;

Thence North  $89^{\circ}48'49''$  West a distance of 219.52 feet;

Thence North  $1^{\circ}14'56''$  West a distance of 26.53 feet to the True Point of Beginning.

Situate in the County of Grays Harbor, State of Washington.

LEGAL DESCRIPTION:

A portion of Section 19, Township 16 North, Range 11 West of the Willamette Meridian, Grays Harbor County, Washington, described as follows:

Commencing at the West One-Quarter corner of said Section 19;  
Thence South  $88^{\circ}47'55''$  East along the East-West centerline of Section 19 a distance of 2004.79 feet to the True Point of Beginning;  
Thence North  $1^{\circ}14'56''$  West parallel with the West line of Government Lot 2 a distance of 1362.25 feet to the North line of the Southeast Quarter of the Northwest Quarter of said Section 19;  
Thence South  $89^{\circ}23'57''$  East along said North line a distance of 530.66 feet;  
Thence South  $1^{\circ}14'56''$  East a distance of 1394.35 feet to the Northerly right-of-way line of State Highway S.R. 105;  
Thence North  $89^{\circ}48'49''$  West along said Northerly right-of-way line a distance of 530.55 feet;  
Thence North  $1^{\circ}14'56''$  West a distance of 35.94 feet to the True Point of Beginning.

Situate in the County of Grays Harbor, State of Washington.



## OFFICE OF THE ATTORNEY GENERAL

September 12, 1983

Mr. Douglas C. Lewis  
Charette, Brown, Edwards,  
Lewis & Janhunnen  
Attorneys at Law  
Aberdeen Square  
110 West Market Street  
P. O. Box 1806  
Aberdeen, WA 98520

re: Acquisition of Elk River Mitigation Property

Dear Doug:

I am writing in response to your September 1, 1983, letter regarding the above subject. The Department of Game agrees to take the Elk River property subject to the PUD easement listed as encumbrance No. 6. It is my understanding that the property owners in the vicinity already have electrical service to their homes and the chances of this easement ever being exercised are very slim.

You have indicated that the City agreed to assist the state in tracing the present ownership of the mineral rights to the Elk River property. I believe it would be more accurate to state that the City is agreeing to take the lead role in tracing the present ownership of these rights and contacting owners regarding possible acquisition or restriction of the rights. Please contact us once you have identified the holder of these rights so that we may discuss the matter before you actually initiate contact with said holder. We may decide that we do not wish to actually contact or negotiate the matter once we find out who the owner is and whether or not there is another course of action we wish to take. In other words, we may not wish to make the present owners of the mineral rights aware of the fact that they own them.

I agree with you that a hold harmless agreement should take care of our problems with the right-of-way easement, encumbrance No. 5. Please draft the appropriate hold harmless agreement which should hold us harmless from any acquisition costs or costs of preventing development. Please let me

Ken Eikenberry, Attorney General  
Temple of Justice, Olympia, Washington 98504

OFFICE OF THE ATTORNEY GENERAL

Mr. Douglas C. Lewis

Page Two

September 12, 1983

know immediately whether the sellers will join in the agreement to hold the state harmless. Your alternative to execute such an agreement in favor of the state if the sellers will not so agree is acceptable.

Finally, I have forwarded the final papers to the Game Department staff for their review so that any corrections that become necessary can be made prior to recording upon receipt of the Corps permit.

Thank you for your cooperation and assistance in this matter.

Very truly yours,

FOR THE ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Paul S. Majkut".

Paul S. Majkut  
Assistant Attorney General

PSM:bl

cc: Dave Gufler  
Gene Tillett

CHARLETTE BROWN EDWARDS LEWIS & JANHUNEN

A PROFESSIONAL SERVICE CORPORATION

ATTORNEYS AT LAW

ABERDEEN SQUARE

110 WEST MARKET STREET

POST OFFICE BOX 1806

ABERDEEN, WASHINGTON 98520

(206) 533-1600 OR 532-1960

VN  
ETTE  
DS  
JNEN  
IS

September 1, 1983

Paul Majkut  
514 17th Avenue East  
Olympia, WA 98501

Re: Acquisition of mitigation property

Dear Paul:

I am writing to confirm our recent phone conversations regarding various encumbrances on the parcels in question appearing on the preliminary title reports. As expected, the encumbrances appearing on both reports are identical.

The closing papers provide for the removal of encumbrances numbered 1 through 4 on the reports and, consequently, our discussion only concerns encumbrances 5, 6, and 7.

It is my understanding that we agreed that the PUD easement listed as encumbrance No. 6 is not a problem and that the State is prepared to take title subject to that easement.

Encumbrance No. 7 involves one-half of the mineral rights on the property which were reserved by Shafter Roberts. Apparently, representatives of the State are reluctant to take subject to those rights, however, because of the problems and delays inherent in the removal of this encumbrance, the State is prepared to take title subject to it so long as the City agrees to assist the State in tracing the present ownership of these rights and making contact with the owners regarding possible acquisition or restriction of the rights. Although the City agrees to assist in this search and negotiation, it is clearly understood between the parties that the City is in no way obligated or committed to share in the cost of acquiring or restricting these rights. Such acquisition or restriction, once the owners have been located, will be at the

Paul Majkut  
Page 2  
September 1, 1983

able expense of the State. As a practical matter, we both acknowledge that the present owners of these mineral rights are probably unaware of their ownership interest and, furthermore, even if aware of their rights, the costs of development are prohibitive. Finally, the fact that the State as owner of the other one-half of the rights would not join in a development, makes such development virtually impossible.

You may consider this letter as the City's commitment to assist the State in searching out ownership of Mr. Roberts' mineral rights and our commitment to assist in determining the requirements of acquisition or restriction of those rights. Again, I reiterate, the City will not join with the State and makes no commitment regarding the cost of acquiring or restricting those rights.

The right-of-way easement, encumbrance No. 5 on the title report, causes the most serious problems. Unfortunately, one of the parties to this sale anticipated that encumbrance and, consequently, its existence causes all of us to scramble at the last moment for a solution.

After discussing various options, it is my understanding that we have agreed that the State will take the parcel subject to this right-of-way easement so long as the state receives a hold harmless agreement containing language to the effect that the City will save the state harmless from the cost of acquiring this right-of-way if and when its owner or alleged owner attempts to exercise it.

Following our discussion, I spoke with Mr. Don Johnson of Hogle & Gates, the attorney for the sellers. I explained to him the problem and the proposed solution. I advised him that I felt that according to the sale documents, the City was not required to take title from the seller subject to this right-of-way. However, because the state was prepared to take subject to the right-of-way on condition of a hold harmless agreement, I suggested to Mr. Johnson that his clients also execute such an agreement in favor of the City. After a lengthy discussion, he agreed that he would recommend to his clients that they jointly execute with the City a hold harmless agreement containing the above-described language.

Paul Majkut  
Page 3  
September 1, 1983

Based upon my discussions with the City and Mr. Johnson, I have authority to make the following commitment.

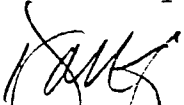
First, assuming sellers agree to join with the City in the hold harmless agreement as expected, the City and the sellers will jointly execute a hold harmless agreement in favor of the State of Washington agreeing to hold the State harmless from the cost of acquiring the easement or preventing development of the right-of-way upon demand by the owner or alleged owner of the right-of-way. In the alternative, in the event sellers refuse to join in such an agreement the City will, on its own, execute such an agreement in favor of the State and in a separate action pursue indemnification from the sellers.

You will find enclosed copies of the deeds I have prepared whereby the City deeds to the Department of Game the various parcels required by the mitigation contract. Mr. Johnson and I concluded that it would best not to include on the face of the deeds the right-of-way easement. We felt this would only give validity to an encumbrance which has most likely died a natural death and is no longer enforceable. The other agreed encumbrances, however, are specified. If for some reason the form of these deeds is not acceptable, please advise me immediately before the escrow agent records them. Recording will not occur until the City receives its Corps permit.

I have done my best to accurately state what I believe to be our understanding. If I am incorrect, please advise me immediately.

Thank you for your continued cooperation and assistance.

Sincerely,



DOUGLAS C. LEWIS  
DEL:mjt

cc: Bob Olander

CHARETTE BROWN EDWARDS LEWIS & JANHUNEN

A PROFESSIONAL SERVICE CORPORATION

ATTORNEYS AT LAW

THOMAS A. BROWN  
ROBERT L. CHARETTE  
DAVID L. EDWARDS  
CURTIS M. JANHUNEN  
DOUGLAS C. LEWIS

ABERDEEN SQUARE  
110 WEST MARKET STREET  
POST OFFICE BOX 1806  
ABERDEEN, WASHINGTON 98520  
(206) 533-1600 OR 532-1960

September 1, 1983

**COPY**  
This copy is sent to you  
for your information only.

Mr. Carl Kassebaum  
Environmental Evaluation Branch  
Environmental Protection Agency  
1200 6th Avenue  
Seattle, WA 98101

Re: Acquisition of Ocean Shores mitigation land

Dear Carl:

I am writing to confirm our recent phone conversation, wherein I advised you of the error in your letter to Grays Harbor Title Company. Specifically, the permit number cited in your letter was incorrect. The last digit should have been a 2 rather than a 7.

When I brought this to your attention, you consulted your records and confirmed that in fact there had been an oversight and that it was a typographical error. I advised you that I was changing the original of the letter to correct this error. By a copy of this letter, I am advising the other agencies which signed the letter that this change has been made and that the letter as changed has been filed with the escrow agent.

I have attached a copy of the amended letter for your file. Copies of the amended letter will be provided to the other agencies along with a copy of this letter.

Sincerely,

  
DOUGLAS C. LEWIS

DCL:mjt

cc: Rick Hirschberg  
Linda McCorkle  
Gene Tillett  
Paul Majkut  
Lorraine Bodi

Grays Harbor Title Company  
Post Office Box 386  
Aberdeen, Washington 98520

Dear Sirs:

Upon 1) the deposit of funds in the amount of \$25,500 by ITT Rayonier in escrow account #5608, as provided by the earnest money agreement between the City of Ocean Shores and sellers, for application towards aquisition of property, and 2) transfer of property deed(s) to the Washington Department of Game, the following signatories consider the above actions to adequately satisfy the mitigation requirements specified in Corps of Engineers permit number 071-0YB-4-008372 titled ITT Rayonier, Inc.



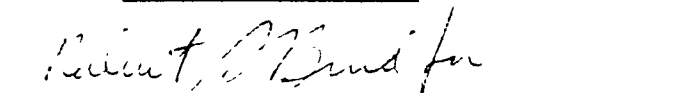
Frank R. Lockard  
Director  
Washington State Department of Game

Dated 8-22-83



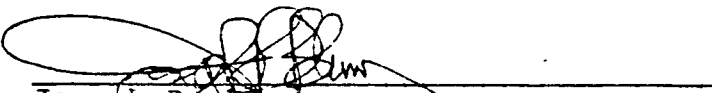
H.A. Larkins  
Regional Director  
National Marine Fisheries Service

Dated 8/24/83



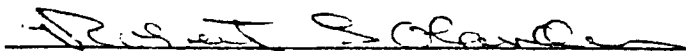
Ernesta B. Barnes  
Regional Administrator  
Environmental Protection Agency

Dated 8/23/83



Joseph R. Blum  
Assistant Regional Director  
U.S. Fish and Wildlife Service

Dated 8-22-83



Robert L. Olander  
City Manager  
City of Ocean Shores

Dated 8-29-83



## OFFICE OF THE ATTORNEY GENERAL

SEP 12 REC'D

### Inter-office Correspondence

Date: September 12, 1983

To: Dave Gufler, Gene Tillett, and Bob Dice, GAME

From: Paul S. Majkut, Assistant Attorney General *PSM*

Subject: Acquisition of Elk River Mitigation Property

Please review the letter of agreement, my response, and the statutory warranty deed and other pages attached to this memorandum. Please review them immediately. Please check the accuracy of the legal description when you do your review. Recording will take place at the end of this month and any concerns you have must be resolved by the end of the month.

PSM:bl

Enclosure